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ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CATHERINE WELLS and CLARENCE
WELLS,

Plaintiffs,

v.

GC SERVICES LIMITED PARTNERSHIP,

Defendant.

CIV. NO. C 06-03511 RMW HRL

**NOTICE AND MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND
[PROPOSED] ORDER**

Date: April 25, 2008

Time: 9:00 a.m.

HON. RONALD M WHYTE

U.S. District Court

280 South 1st St., San Jose, CA

PLEASE TAKE NOTICE THAT on April 25, 2008, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the above-entitled Court located at 280 South 1st St., San Jose, CA 95113, Plaintiffs will move the court to Enforce the Settlement Agreement entered into at the Settlement Conference with Hon. Howard Lloyd. This motion will be based on the herein notice and motion, including the legal authorities cited, the supporting declaration, all documents related to the motion, all documents in the Court's file in this action, all matters of which the Court may take judicial notice, and any other items the Court deems appropriate.

1 **1. BACKGROUND**

2 With the assistance of Hon. Howard Lloyd, the parties resolved this matter at a
3 Settlement Conference on February 11, 2008. The parties placed the terms of settlement on the
4 record, agreed the Defendant must take action to complete the settlement by March 12, 2008.¹ The
5 parties also agreed this court would retain jurisdiction to enforce the terms of the settlement agreement.
6 *See Declaration of Ronald Wilcox in Support of Motion to Enforce Settlement Agreement* (hereafter
7 “*Wilcox Decl.*”), ¶1.
8

9 The Hon. Ronald M. Whyte set a Case Management Conference for March 14, 2008. When
10 Defendants failed to complete the settlement, Plaintiffs filed a request to Continue the March 14, 2008
11 CMC, to allow Defendant more time to honor the settlement terms. The Hon. Ronald M. Whyte
12 continued the March 14, 2008 CMC to March 28, 2008 (Doc# 113), indicating there would be no
13 further continuances. *Wilcox Decl.*, ¶2.
14

15 Defendant had thirty days to complete the settlement. However, Defendant has breached the
16 terms of settlement and has failed to complete the settlement. Plaintiffs met and conferred with
17 Defendant in an effort to resolve this matter, including phone calls on March 19, 2008 to Defendant’s
18 counsel and the insurance carrier, and several e-mails. In an email dated March 19, 2008, Defendant
19 wrote, "ACE's check is in the mail..." However, as of the time of this writing Defendant is still in
20 breach, the settlement was to be concluded by March 12, 2008, and the court had indicated it would
21 not allow any further continuances of the CMC. Plaintiffs were forced to file this motion. *Wilcox*
22 *Decl.*, ¶3.
23

24 Plaintiffs respectfully request: 1) an order enforcing the terms of the settlement agreement, and
25 requiring Defendant to complete the terms of the settlement agreement immediately, and 2) an order
26 awarding Plaintiffs their attorney’s fees and costs (\$1,300) for having to enforce the terms of the
27

28 ¹ Plaintiffs have ordered a copy of the recording of the settlement terms placed on the record.

1 settlement agreement.

2 **2. ARGUMENT**

3 In making the decision to enforce a settlement agreement, a district court must conclude that
4 the parties have reached an agreement on all material terms. *Brock v. Scheuner Corp.*, 841 F.2d 151,
5 154 (6th Cir. 1988). Where facts material to an agreement are in dispute, an evidentiary hearing is
6 generally compulsory. *RE/MAX Int'l, Inc. v. Realty One, Inc.*, 271 F.3d 633, 646 (6th Cir. 2001) citing
7 *Kukla v. Nat'l Distillers Prods. Co.*, 483 F.2d 619, 622 (6th Cir. 1973)). However, no evidentiary
8 hearing is required where an agreement is clear and unambiguous and no issue of fact is present. *Aro*
9 *Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1372 (6th Cir. 1976). Thus, summary enforcement of a
10 settlement agreement, as in this case, is appropriate when there is no substantial dispute regarding the
11 existence of the agreement and the terms are unambiguous. *Kukla*, 483 F.2d at 621; *Aro Corp.*, 531
12 F.2d at 1372.

13
14
15 Herein, the parties do not dispute an agreement was reached. Indeed, Judge Lloyd's minute
16 order clearly states, "Settlement Conference Held. Case settled. Terms are confidential." Doc# 110.
17 Simply put, Defendant is in breach, and Plaintiffs have been forced to file this motion.

18 Furthermore, Plaintiffs brought claims under the Fair Debt Collection Practices Act, which
19 contains a fee shifting provision, thus providing reasonable attorney's fees and costs. 15 U.S.C. 1692k.
20 Therefore, Plaintiffs are entitled to all reasonable fees and costs incurred herein. *Nunez v. Interstate*
21 *Corporate Systems, Inc.*, 799 P.2d 30 (Supreme Court of Arizona 1990)("The award of attorney fees
22 was required under 15 U.S.C.S. § 1692k(a)(3) because it provided statutory authority not only to award
23 fees in the initial action but also in any action, such as this one, to enforce the judgment obtained in
24 that initial action."). Also see, *In re Nucorp Energy*, 764 F.2d 655 (9th Cir. 1985) and *Spain v.*
25 *Montanos*, 690 F.2d 742 (9th Cr. 1982).

26 **3. RELIEF REQUESTED**

1 Plaintiffs respectfully requests:

- 2 1) an order enforcing the terms of the settlement agreement, and requiring Defendant to complete the
3 terms of the settlement agreement immediately,
4 2) an order awarding Plaintiffs' counsel Ronald Wilcox attorney's fees and costs for having to enforce
5 the terms of the settlement agreement (the amount to date is \$1,300),
6

7
8 Respectfully submitted,

9 Dated: 3/21/08

10 /s/Ronald Wilcox

11 Ronald Wilcox, Counsel for Plaintiffs
12
13

14 **[PROPOSED] ORDER**

15 Defendant is hereby ordered to complete the terms of the settlement agreement that were placed
16 on the record with the Hon. Howard Lloyd on February 11, 2008, without delay.

17 Defendant is also ordered to reimburse Plaintiffs' counsel Ronald Wilcox \$1,300 for the
18 attorney's fees expended relating to Defendant's breach.

19 **IT IS SO ORDERED.**

20 Date:
21
22

23 HON. RONALD M. WHYTE
24 U.S. DISTRICT JUDGE
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26
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